

DRAFT REPORT

Identification & removal of barriers
to acceptable tourism development
on communal land in Namibia



M A F I S A

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ABBREVIATIONS

CBNRM	Community based natural resource management
DBN	Development Bank of Namibia
DBSA	Development Bank of Southern Africa
HDE	Historically Disadvantaged Enterprise
HDI	Historically Disadvantaged Individual
JV	Joint Venture
MET	Ministry of Environment and Tourism
The Minister	The Minister of Environment and Tourism
PPP	Public-private partnership
NACOBTA	Namibia Community Based Tourism Association
NGO	Non-government Organisation
NLP	The National Land Policy of 1997
Tenure Policy	The draft National Land Tenure Policy (March 2002)
NTDP	Namibia Tourism Development Programme
PTO	Permission to Occupy
SADC	Southern African Development Community
SOE	State-Owned Enterprise
TOR	Terms of reference

EXECUTIVE SUMMARY

- (1) The policy and legislative environment relating to natural resource management in Namibia's communal areas has recently undergone significant reform. The broad thrust has been to restore control over resources to local communities. But the process has not been fully integrated and there are potential conflicts between the rights and duties conferred under various pieces of legislation.
- (2) Tourism investment in Namibia's communal areas is constrained by a perception that land tenure is insecure. This is a legacy of the old land dispensation, which is currently being phased out in terms of the recently enacted Communal Land Reform Act. This Act modernises the allocation and administration of land in the communal areas and potentially provides a framework for durable tenure security.
- (3) However, the implementation of the Act is at an early stage and uncertainty remains in areas such as the period, size, transferability and pricing of leasehold rights. In addition, the lack of integrated land use planning means that tourism areas are not effectively regulated within an overall planning framework.
- (4) There is a widespread perception in the capital markets that ecotourism is a high risk industry. A long product development cycle and early liquidity problems inhibit the industry's ability to raise commercial capital. Elsewhere, states have intervened to remedy the situation by supporting financial products designed to accommodate the cash flow needs of ecotourism enterprises. No such products are currently available in Namibia. The recently established DBN may be in a position to assist.
- (5) Namibia's banking sector perceives land rights in the communal areas to be insecure and therefore to have no collateral value. Establishing acceptance of the market value of leasehold rights is of crucial importance if the capital market is to fund development in the communal areas.
- (6) Financial institutions in Namibia currently lack the specialised expertise and credit assessment procedures necessary to deal with tourism proposals. It is imperative that key institutions such as the DBN develop such capacity if the tourism industry is to access capital in the commercial markets.
- (7) Likewise, the development of specialised tourism expertise within MET would enable government to act with greater confidence in the promotion of joint venture partnerships in the communal areas and elsewhere.
- (8) The Namibian tourism industry suffers from a skewed ownership pattern rooted in the country's colonial past. This inhibits the level of support rendered by government and the prioritisation of the industry as a key driver of economic growth and transformation.
- (9) Elsewhere, financial instruments are used to help remedy this problem but it would appear Namibia currently does not have financial products specifically designed to promote black empowerment in the tourism industry. The absence of such assistance is hampering the transformation of Namibia's tourism industry and, as such, is a constraint to the expansion of acceptable tourism in the communal areas.
- (10) In many countries, governments have provided incentives of one sort or another to drive the transformation of the industry and to induce the private sector to invest in tourism plant. Namibia currently does not offer such incentives.
- (11) The question of incentives should be viewed within the context of the larger need to build confidence in the tourism industry as a strategic sector that can contribute to growth and transformation. There is a need to deepen trust between government and the private sector, develop transformation instruments such as industry charters and affirmative policy approaches, and gather data to underpin arguments regarding the strategic importance of tourism.
- (12) The following table summarises the specific barriers and recommendations presented in the report.

SUMMARY TABLE

CATEGORY	GENERAL BARRIER	SPECIFIC BARRIER	RECOMMENDATION
Legal & procedural issues	Perceived insecurity of tenure	Lack of clarity regarding leasehold rights	In the short term, MET to propose regulations under the Communal Land Reform Act to guide the Minister of Lands in the granting of leasehold rights for tourism
		Absence of integrated land use planning	In the short term, MET to propose regulations under the Communal Land Reform Act to give Land Boards powers that promote integrated land use planning
		Uncoordinated sectoral legislation	In the medium term, MET to advocate the integration of legislation impacting on resource management
		No recognition of customary tenure	In the long term, MET to approach the Minister of Lands to consider recognizing a form of customary tenure under the Communal Land Reform Act
Financial issues	Lack of access to capital	Absence of appropriate financial products	In the short term, MET to engage the DBN and private banking sector to advocate financial products tailored to the cash flow needs of the tourism industry
		Lack of specialised expertise in key institutions	In the short term, MET to advocate the development of specialised tourism-related technical expertise in the DBN In the medium term, MET to develop specialised tourism expertise within the Ministry, possibly located in the proposed Concessions Unit
		Uncertain collateral value of leasehold rights	In the short term, MET to ensure the new regulations recommended above underpin the collateral value of communal tourism leases
		Absence of tourism incentives	In the medium term, MET to promote and coordinate the preparation of appropriate baseline information designed to build confidence in the strategic importance of the tourism industry and prepare the way for tourism-specific incentives
Empowerment issues	Historical exclusion	Lack of trust between government and the private tourism industry	In the short term, MET, together with the organised tourism industry, labour and the NGO sector, to develop a programme of engagement with government designed to build understanding of, and confidence in, the strategic importance of the tourism sector as a driver for economic growth, diversification and empowerment
		Absence of financial instruments to promote black empowerment	In the short term, MET to investigate the extension of the subsidised loan scheme from the agricultural to the tourism sector In the short term, MET to engage the DBN to advocate the establishment of “affirmative” financial products designed to expand broad-based empowerment in the tourism industry
		Absence of a transformation charter for broad-based empowerment in the tourism industry	In the short term, MET, together with the organised industry and labour, to develop a transformation charter for tourism In the short term, MET to incorporate empowerment objectives into the national tourism policy

1 INTRODUCTION

1.1 Preface

This document presents a report prepared in terms of a service contract between the ComMark Trust and Mafisa. The study was commissioned by the MET and co-sponsored by the ComMark Trust, WWF Life and the NTDP.

The purpose of the assignment is to:

- (a) Conduct research among tourism stakeholders to determine what barriers exist for acceptable tourism investment in Namibia, with particular emphasis on communal areas.
- (b) Investigate mechanisms used elsewhere to overcome similar barriers.
- (c) Investigate how national empowerment of previously disadvantaged individuals can be promoted in tourism development, without imposing new barriers on potential investors or imposing opportunity costs on conservancies.
- (d) Prepare a document outlining the findings of this research.
- (e) Present the findings to the MET and other stakeholders.
- (f) Recommend short, medium and long-term strategies for overcoming these barriers.

1.2 Methodology

The preparation and orientation phase included:

- (a) A brief review of relevant Namibian literature including key Namibian reports and legislation as outlined in the TOR and gathered during the inception phase;
- (b) A review of Southern African experience in barrier removal for private sector investment and empowerment promotion in tourism. This included a brief overview of experience in South Africa, Mauritius and Botswana.
- (c) Inception meetings in Windhoek including:
 - Initial discussions with the client to finalise the TOR;
 - Exploratory meetings with key informants from the MET, the private sector as well as other government agencies and SOEs (see 6 for a list of people interviewed);
 - Feedback to the client on discussions held during the inception meetings; and
- (d) Additional desktop research on relevant regional and international experience.
- (e) The preparation of an inception report and its presentation to a group of key stakeholders.

- (f) The preparation of a draft final report incorporating the comment received during the presentation of the inception report.

1.3 Background

Photographic tourism is widely thought to present a significant opportunity for generating economic benefits in Namibia's wildlife-rich and scenic communal areas. Over the last decade, a limited number of tourism enterprises have emerged in such areas, often in the form of joint ventures between local communities and the private sector. However, while rural people have benefited from these enterprises, there is a widespread view that the tourism potential of the communal areas remains underexploited and that more could be done to encourage beneficial linkages between rural communities and tourism businesses operating on their land¹. From experience gained elsewhere, it would appear that partnerships between private sector operators and communities can be a very effective way of accelerating rural economic development and bringing local people into the tourism industry.

Although such partnerships are widely accepted and well established elsewhere in southern Africa, they are not yet widespread in Namibia. An important step towards achieving greater understanding of partnerships was the completion of a study commissioned by NACOBTA to learn from experience gained elsewhere and to formulate a framework comprising models, procedures and guidelines that are applicable to the Namibian situation. The findings of this study served as a framework for tender processes for lodge sites during 2002 and 2003 (see Contour Project Managers, 2002). It has become apparent through these tender processes and also through consultation between government departments, the private sector, conservancies and other stakeholders, that there are significant impediments to attracting acceptable tourism development on communal land (see NACOBTA JV Unit, 2004).² The current study was thus commissioned to investigate these issues, identify the constraining factors and develop recommendations for their mitigation.

2 LEGAL AND PROCEDURAL ISSUES

2.1 The current framework

The focus to date of tourism policy in Namibia has been to actively promote the increased involvement of rural communities in the tourism industry and to ensure their greater access to benefits accruing from

¹ For example, during the inception interviews, Mr Willem de Wet, chief executive of Namibia Country Lodges, argued that "the most significant tourism development opportunities outside the national parks occur on communal land". Accordingly, his company has invested in the Twyfelfontein and Mayuni conservancies and was planning an expansion in areas such as Nyae Nyae.

² Acceptable tourism development is defined in the TOR as tourism that contributes positively to the local and national economy, the local environment, and the empowerment of local people, as well as other previously disadvantaged people.

tourism enterprises. This programme has had as its rallying point the linkages between the sustainable management and use of wildlife and the financial benefits to be derived from wildlife-based economic activity.

Accordingly, the policy and legislative environment has over the past decade undergone significant reform in recognition that historically the majority of the population has been excluded from the full enjoyment of socio-economic rights. This reform process has had at its core the restoration of the ownership of natural resources to communities residing on communal land and the creation of incentives to manage these resources sustainably and for community benefit.

As a result, legislation has been passed providing for community-based management of natural resources in the wildlife, forestry and inland fisheries sectors. Draft legislation has also been prepared for the management by communities of water resources on communal land. In addition, legislation is now in place which modernises the allocation and administration of land rights in communal areas.

The Nature Conservation Amendment Act, 1996

The Nature Conservation Amendment Act gives a conservancy, upon its declaration by the Minister, the rights to manage and use game and to benefit from wildlife. By requiring that conservancies establish uncontested boundaries, have legal personality and a management structure by virtue of their constitutions, government is attempting to not only provide a more solid management entity but also a more reliable investment partner for those interested in co-operating with conservancies in joint tourism ventures.

However, the Nature Conservation Amendment Act limits the extent of the powers vested in conservancies. The fact that a conservancy has been declared by the Minister gives no more than the right of members to manage and benefit from game within the boundaries of the conservancy, including benefits from tourism activities.

This has several implications for a tourism investor. Firstly, the Nature Conservation Amendment Act does not give exclusive rights to members to so benefit. In practice, a rival investor might secure rights from government to establish a tourism lodge metres from the site of the conservancy's preferred investor, despite the protestations of the conservancy committee. In this situation, the committee could do no more than lobby government to prevent the rival from undermining the business of the preferred investor.

Secondly, the rights and duties of conservancies over the land falling within the boundaries of the conservancy are limited and do not, for example, enable them to exclude certain third party users from their land. This means that conservancies are not formally empowered to develop and enforce rules and regulations on the ground that guarantee a stable operational framework for tourism, and they cannot

therefore make commitments to their private sector partners in this regard. Theoretically, a site in the conservancy identified for tourism use could face a multitude of threats, including:

- (a) at a broader level, a land invasion by settlers from an area outside the boundaries of the conservancy claiming a right to the land in question;
- (b) at a local level, resident non-members of the conservancy settling in the area or practising land use options to the detriment of the conservancy or the tourism investor (such as grazing livestock or cultivating lands in the vicinity of lodges);
- (c) the conservancy's income generation and the tourism investor's traversing rights within a conservancy being interfered with by self-driven tourists undertaking photographic safaris within the conservancy area in conflict with conservancy-sanctioned tourism activities.

The Forest Act, 2001

An approach similar to the conservancy model has been adopted in the Forest Act, 2001. Community forests are to be managed by a management authority established under substantially the same conditions and subject to the same procedures as conservancies. The Minister of Environment and Tourism may only declare an area of communal land to be a community forest where the traditional authority or the Communal Land Board has given its consent.

The Forest Act goes further than the Nature Conservation Amendment Act in linking the right of communal residents to form a community forest to their customary tenure rights over such land. In so doing, the management body of the community forest may not only regulate the use of the forest, forest products and other natural resources found in the forest, but also regulate the grazing of livestock and charge fees for the use of the forest.

The implications for tourism investment are significant, in that:

- (a) the rights granted to communities go beyond the management of trees to the broader environment in which such forests occur;
- (b) the Forest Act can be used to curb land invasions by outsiders since the control over grazing could be used as a form of "influx control";
- (c) the management plan for a community forest could be used to ensure conservation and sustainable use.

These provisions thus grant to the community forest greater security of tenure over the resources occurring within their boundaries. They may also serve as a means to curtail unsustainable use. For the tourism developer such controls mean a less risky natural environment within which to invest.

The Parks and Wildlife Management Bill, 2004

The Ministry of Environment and Tourism is currently drafting legislation on wildlife. A July 2004 draft of the Parks and Wildlife Management Bill (“the Bill”) grants to the conservancy exclusive rights of utilization of wildlife, wildlife habitats and tourism in the conservancy. This effectively takes care of the dilemma of rival investors making deals with elements within the conservancy and bypassing the conservancy committee in the process. However, such exclusivity is controversial since it prevents other local resource managing institutions, such as forestry committees established under the Forest Act, from benefiting from the tourism potential where the forests are situated within conservancy boundaries. Moreover, such exclusivity could conflict with rights granted under the Forest Act to community forest management institutions and therefore be legally untenable.

Tenure under customary law

Forms of tenure over land and the resources occurring on it have existed under customary, or “indigenous law,” for many centuries. Customary law provides a set of legal rules, not only for the allocation and use of communal land but also for the allocation of other resource rights. However, tenure of land and natural resources under customary law is difficult to assert because its ascertainment is challenging (since it is mostly unwritten and survives in an oral tradition), and its rules unsystematic and subject to diverse interpretations. Consequently, its enforcement and efficacy is largely dependent upon the respect and legitimacy enjoyed by the traditional authority structures charged with its implementation.

The Namibian Constitution states that the customary law in force at the date of independence shall remain in force to the extent that it does not conflict with the Constitution itself or any other statutory provision (Article 140(1)). This implies that indigenous practices in regard to natural resources which have been formalised into traditional rules will be enforceable amongst members of a particular traditional community by its traditional authority. However, such rules are not enforceable against people who do not belong to such a traditional community. This means that in practice, for instance, should a person from another traditional community trespass on the traditional area of a particular traditional community such person may not be evicted in terms of that traditional community’s customary law but only by invoking civil law or statutory authority under the Communal Land Reform Act.

Whilst there are reasonably developed customary rules relating to land administration, hunting and forests (Hinz, 1995), it is uncertain as to the degree to which such rules are adhered to in Namibia. Moreover, the entitlement of communities to these resources can be termed “fuzzy” (Devereau, 1996) and can be contrasted with western notions of property rights, as described in the following passage:

In developed countries, property is often sharply defined in terms of ownership, implying that the owner has sole use of the resource, and has recourse to legal sanctions preventing its use by others. In village societies, such strict notions of ownership are less prevalent. Instead, people have individual or collective property rights, defined by their membership of the community (Ellis, 1993).

Some commentators argue that chiefs and headmen have retained important powers over the allocation of land according to customary law (Hinz, 1995), whilst others are of the opinion that they in reality enjoy extremely limited legally sanctioned authority over land administration because such customary rules have been overridden by statute (Van der Byl, 1992).

Whatever the formal interpretations of law, the reality on the ground is that a parallel system of indigenous customary law continues to operate alongside and impact upon the tenure rights over the land on which many of the natural resources are to be found.

Tenure Policy

In recognition of these deficiencies, the National Land Policy, adopted in 1997, recognises that clear steps need to be taken to remove uncertainty about legitimate access and rights to land, and the ways in which land is administered. In some areas, traditional authorities currently undertake land administration with varying degrees of efficiency and legitimacy. In other areas, there is no clear or broadly accepted authority over land.

In terms of Namibia's draft National Land Tenure Policy of March 2002, in ensuring sustainable use of natural resources, tenure should be understood in the broadest sense to include:

- (a) ownership over land;
- (b) indigenous people's rights over land;
- (c) conditions under which land or buildings are held or occupied; and
- (d) the manner in which access to resources may be obtained and the conditions under which resources may be used, as well as the nature and extent of the public interest over these resources.

The Tenure Policy acknowledges that a component of communal tenure consists of tenure over forests and grazing, but that free access by communities to such common resources leads to over-exploitation of these resources and consequent environmental degradation. The policy accordingly confirms further that the key to achieving productivity, investment and natural resource management lies in security of tenure.

The Communal Land Reform Act, 2002

In recognition of the need to ensure security of tenure in communal areas, the Communal Land Reform Act, 2002, ("the Act") modernises the allocation of rights in respect of communal land. The Act, and the regulations published under the Act, now forms the cornerstone of land administration in Namibia's communal lands; amongst other things, it establishes Communal Land Boards ("Land Boards") for land administration and delineates the powers of chiefs, traditional authorities and Land Boards in relation to communal land.

The Act permits the allocation of three types of “customary land rights” in respect of (i) a farming unit (ii) a residential unit and (iii) to any other form of customary tenure recognised in the discretion of the Minister of Lands. The latter confers wide discretionary powers on the Minister of Lands to recognise forms of “customary tenure” other than residential and farming rights.

The second main category of land right which may be allocated in terms of the Act is a right of leasehold for a period not exceeding 99 years. This right replaces the arbitrary and unevenly applied system of “Permissions To Occupy” under previous legislation. The lessee may only use the leased land for the purposes for which it is leased and subject to the conditions imposed by the Act and the accompanying regulations.

Leasehold rights have the potential to provide durable tenure security to tourism investors due to the fact that such rights can be of long duration and must be registered with the appropriate Land Board. However, during the interviews conducted for the current study, key stakeholders raised several areas of uncertainty regarding the leasehold rights available under the Act. These are discussed in detail below.

In terms of the Act, the power to allocate customary land rights resorts with the chief or traditional authority of a particular traditional community, but any such allocation must be ratified by the appropriate Land Board. By contrast, the power to allocate leasehold rights lies only with the Land Board. It is by no means clear what guidelines the Land Board would follow should it, for instance, be confronted with conflicting land use needs, such as the need of local farmers in an area for intensive grazing of livestock close to a leasehold area set aside for a tourism lodge.

Namibia does not yet have an overall policy and legislative framework for land use planning. Planning tends to take place sectorally creating numerous problems for those implementing national or local development plans. There have been moves by the Ministry of Lands to develop policy and legislation to establish a land use and environmental board but these efforts have thus far been frustrated by the sectoral interests of various players. Accordingly, land use planning has taken place at ministerial level with various *ad hoc* initiatives at local level such as the development of management plans for conservancies and community forests.

In the context of tourism planning the development of a coherent land use planning framework for communal lands is overdue. This is important to avoid land use conflicts at the local level which could seriously undermine tourism development on communal land. A start has been made in section 31(4) of the Act which requires that before a right of leasehold may be granted by a Land Board in an area that has been declared a conservancy, the Land Board must have due regard to any management and utilization plan framed by the conservancy committee. Section 30(2) also empowers the Minister to zone areas of communal land for the granting of rights of leasehold for agricultural purposes.

Traditional Authorities

Forestry management committees, conservancies and water point committees are new institutions which have been given responsibility by government for areas of natural resource management that once fell under the jurisdiction of traditional authorities. In many cases, committees are dominated by younger community members and include several women. This contrasts with the mostly elderly male-dominated traditional authorities. In some cases, conflict has arisen between traditional authorities and the new conservancy committees, particularly over the patronage involved in endorsing applications for developing tourism facilities.

In the north-east of Namibia where traditional leadership is still strong, a model has emerged where the traditional leaders delegate authority to the committees to manage natural resources on their behalf. Institutionally, this strengthens the committee as it derives authority not only from the central government, but also from local traditional leadership (Jones 2000b, Jones 1999b). In Caprivi, for example, the forest management committee has in some cases been positioned as a committee of the sub-Khuta (or traditional authority) responsible for the area in which the community forest is located. Likewise, conservancies in a number of areas have cemented this relationship by offering the traditional authority *ex officio* representation on the conservancy committee. Nevertheless, tensions still exist over some issues, such as the concern that where traditional authorities transfer responsibility for the management of natural resources to committees, the traditional authority will lose revenue from the issuing of permits for resource use.

It is accordingly imperative that there is good co-operation and understanding between the traditional authority and the resource managing institutions at the local level. This is all the more important in the tourism context since a Land Board may in terms of section 30(4) of the Act only grant a right of leasehold for tourism development where the traditional authority having jurisdiction over the area consents thereto. However, where the Land Board considers that the traditional authority should have consented thereto but refused to do so, it can in terms of section 30(5) refer the matter to arbitration.

2.2 Barriers & recommendations

Perceived insecurity of tenure

In general, ecotourism investors require secure tenure over land and associated resources for periods that enable fair and reasonable returns on the capital and expertise invested in their businesses. Reputable investors thus tend either to avoid areas with insecure tenure or, if they do invest, to select only those opportunities that offer the prospect of a quick return on a limited investment. In circumstances characterised by insecurity of tenure (or perceptions of insecurity), development outcomes are inevitably suboptimal. This is sometimes referred to as a “low road” scenario where an

area's economic potential is underdeveloped with few established commercial investors and a proliferation of small, highly precarious, "subsistence" operators³.

It became apparent during the current study that land tenure in Namibia's communal areas is widely regarded as vulnerable, and that this perception, especially in the private tourism and banking sectors, inhibits acceptable tourism development on communal land.⁴ The negative view regarding property rights in the communal areas is largely shaped by past experience of the old land allocation dispensation, which was widely perceived as inadequate to the needs of modern commerce. While there is widespread recognition of Government's efforts to modernise land administration, it would appear that there is still much uncertainty in the investment community about the implications of the new legislation, particularly regarding rights of leasehold in communal areas. If the negative perceptions are to be turned around and a more positive investment climate fostered, it is vital that certain key questions be clarified.

The following section identifies the specific legal and procedural factors constraining investment in Namibia's communal areas and presents a set of recommendations for their mitigation. The overall thrust of the recommended interventions – which are ranked in terms of their short, medium and long term urgency – is to create an environment of greater legal certainty which will be more conducive to private sector investment.

Barrier 1: Lack of clarity regarding rights of leasehold

On the face of it, the leasehold rights available under the Communal Land Reform Act appear to provide adequate protection in respect of each of the four sets of rights generally associated with security of tenure⁵. However, certain questions regarding tourism-related leasehold rights must be clarified if doubts about tenure insecurity on communal land are to be remedied. These include:

³ "Subsistence operators" are generally unable to obtain rights within more formalised frameworks (such as on private land or in public parks) where they are unable to compete against better resourced rivals. They frequently rely on personal relationships with local groups (often tribal authorities) and the lack of enforceability which characterises the areas within which they operate. Their operations typically generate very limited benefits for local residents and are small-scale, undercapitalised and highly vulnerable.

⁴ Key informants interviewed during the inception phase of the study consistently stressed the importance of secure land rights to underpin tourism investment and expressed doubts about tenure security in communal areas. For example, Mr Sven Thieme, CEO of the Olthaver & List Group, which owns and operates the Namib Sun properties, identified the lack of secure property rights as the main factor inhibiting further investment by his group on communal land. Likewise, Mr Willem de Wet of Namibia Country Lodges stressed the importance of tenure security, including the transferability of lease rights, as a fundamental consideration in his firm's investment decisions. And Mr David Nuyoma, CEO of the DBN, argued the importance of long-term and secure tenure rights to guarantee investment in the communal areas.

⁵ Security of tenure is generally associated with four sets of rights, namely:

- *Use rights*: the right to grow crops, make permanent improvements, bury the dead, traverse for tourism purposes, collect firewood and wild fruit, cut trees, hunt, mine, etc;

- (a) **Period** – The maximum lease period available in terms of the Act (99 years) is undoubtedly sufficient to satisfy the needs of ecotourism investors. However, in terms of section 34(2) any right of leasehold for a period exceeding ten years must be approved by the Minister of Lands. International and domestic best practice suggests that fair lease periods in the ecotourism industry are generally for longer than ten years.⁶ It is therefore likely that prospective developers of ecotourism facilities in communal areas will lodge numerous applications for longer lease periods. At this stage, it is however unclear what criteria the Minister would apply in considering such applications.
- (b) **Size** – In terms of section 31(3) of the Act read with regulation 13, a right of leasehold may only be granted to an area exceeding 50 hectares with the written approval of the Minister of Lands. Where tourism infrastructure is dispersed over a broad area or where an operation requires extensive traversing rights to conduct activities such as game viewing, an investor will require rights over a site larger than 50 hectares. Again, the criteria to be applied by the Minister are not currently defined.
- (c) **Integrity of traversing zones** – In terms of section 30(3)(a) of the Act, the grant of leasehold rights should not unreasonably interfere with or curtail the use and enjoyment of the commonage by members of the traditional community. Where the investor requires a traversing area as part of the tourism product, this provision places potential restrictions on the “wilderness” experience that may be offered to clients. This is exacerbated by the absence of formalised land use planning at the local level.
- (d) **Transferability** – Transferability of rights is crucial to underpin the commercial value of leased properties. It is necessary to ensure not only the collateral value of the lease but also the saleability of the business and thus the ability of the lessee to trade or otherwise transfer his rights during the period of the lease.

In general, the free disposal of communal land is not legally possible because:

Under customary law, land is subject to multiple interests. Family heads and individual members of a family have rights of benefit; traditional leaders have powers of allotment and control. It is arbitrary to permit one of these interest-holders to dispose of an object, when others have concurrent rights and powers. (Bennett, 2004)

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- *Transfer rights*: the right to sell, mortgage, lease and bequeath;
 - *Exclusionary rights*: the right exercised at individual or community level to exclude others from appropriating any such rights;
 - *Enforcement rights*: the right to make use of legal and administrative measures to guarantee any such rights.

⁶ Recently concluded lease agreements in the ecotourism sector tend to be for fixed periods ranging from 15 to 50 years. Some older leases are for periods of up to 99-years, but such agreements are today extremely rare. In surveys of commercial leases in the conservation sectors of six southern African countries including Botswana, Namibia and South Africa, Mafisa and Contour recently reported average lease periods ranging from 10 – 45 years (Contour, 2002; Mafisa, 2002).

This customary law principle is carried into the Communal Land Reform Act in that section 17(1) of the Act vests all communal land in the State in trust for the benefit of traditional communities residing in those areas. Section 17(2), furthermore, prohibits the granting or acquisition of freehold title over communal land.

There is thus no market in communal land outside of a traditional community because land cannot be sold in freehold title to recoup the monies advanced. Moreover, the Communal Land Reform Act strictly regulates the activities that may be conducted in the area subject to leasehold rights and by whom they may be conducted. It also makes any grant of leasehold rights subject to the consent of the traditional authority having jurisdiction over the land in question. However, the Act does enable the transfer of existing leasehold rights, provided such transfer is approved in writing by the Land Board. This may enable a market in leasehold rights but it is currently uncertain what guidelines the Land Boards or Minister of Lands will use in considering approval of such transfers.

In terms of regulation 15(1)(g) any tourism business operating on a right of leasehold must be personally conducted by the holder of the right of leasehold, unless the Land Board or the Minister has in writing approved the conducting of the business by another person. This might complicate matters where the conservancy holds the rights of leasehold over the tourism site (as some conservancies would wish to do) and then sub-leases these rights to the tourism operator.

- (e) **Pricing** – In terms of section 32 of the Act a leasehold fee must be paid to the Land Board for the right of leasehold and for any improvements on the land. The regulations published under the Act provide broad guidelines to determine the amount that the Land Boards are entitled to charge. These suggest that the Boards can levy competitive rentals taking into account factors such as the duration of the lease, the particular use for which the right is required, the size of the land and the value of improvements on the land.⁷ However, precise guidelines for the valuation of lease rights are not yet available and it thus remains unclear how the Boards will value ecotourism leases. This is causing considerable uncertainty in the tourism industry where concerns have been raised that high rentals will raise the cumulative cost of resource and other levies payable by ecotourism business above affordability thresholds. Likewise, concerns have been raised that Land Board rentals should be calculated to preserve the CBNRM principle of strengthening local incentives for resource stewardship. If the direct income of conservancies from tourism is diluted too much through revenue sharing with other agencies such as the Land

⁷ Regulation 14 (1): "An amount payable in respect of a right of leasehold and improvements, if any, on a portion of land as contemplated in section 32(2) of the Act, must be determined by the Land Board with regard to:

- (a) the particular use or purpose for which the right is required;
- (b) the value of the improvements, if any, on the portion of the land;
- (c) the size of the portion of land in respect of which the right has been granted; and
- (d) the period for which the right of leasehold has been granted.

Boards, local incentives for conservation may be severely compromised with adverse consequences for Namibia's CBNRM programme in particular and biodiversity conservation in general.

- (f) **Conservancies as intermediaries** – Various informants argued that conservancies should act as intermediaries for tourism leases. In practice, this would mean that the Land Boards would grant “headleases” to conservancies who would in turn sublease to third parties⁸. This is regarded as important to strengthen CBNRM by building a sense of resource ownership amongst conservancies (who are responsible for wildlife management at the local level) and enabling conservancies to secure an income stream (from resource rentals) thus strengthening local incentives for sustainable natural resource management. Although all the representatives of the private sector interviewed during the inception phase accepted the principle of conservancies as intermediaries, certain concerns were raised regarding:
- *The organisational, technical and managerial capacity of conservancies.* The lack of resident institutional capacity and entrepreneurial culture at the local level means that conservancies are often unstable and weak organisations. This escalates the so-called “transaction costs” of doing business in the communal areas where the negotiation and maintenance of agreements are time consuming and expensive. Moreover, while praising the role played by NACOBTA's JV unit in building the capacity of conservancy committees, private sector representatives also argued the need for greater coordination between the various support agencies active in the communal areas.
 - *The effect on the security and collateral value of leasehold rights.* Deriving lease rights via a sublease from an intermediary such as a conservancy and not directly from the land authority, escalates risk for the investor and probably undermines the collateral value of the sublease.

Recommendation 1: Draft regulations under the Communal Land Reform Act to guide the Minister of Lands in the granting of leasehold rights for tourism development

In the **short term**, it is **recommended** that the MET **propose** regulations under the Communal Land Reform Act to guide the Minister of Lands in the granting of leasehold rights for tourism purposes. The regulations should include guidance on:

- (a) the appropriate size for tourism lease areas;
- (b) the appropriate period for such leasehold rights;

⁸ This is currently the approach advocated by NACOBTA and incorporated into the JV concessioning framework for communal areas developed under the auspices of NACOBTA's JV Unit. This is also similar to the approach used in Botswana where communities (organised in the form of trusts) can acquire headleases to areas designated for community management or community photographic use. In terms of these agreements, communities acquire the leases on nominal terms from the land boards and have the right to sublease to third parties using standardised tender procedures and documentation.

- (c) the rental to be paid by the holder of tourism leases (including guidelines on the rental to be charged where conservancies hold 'headleases');
- (d) the conditions under which tourism leasehold rights are transferable to third parties (including guidelines on the position of conservancies as intermediaries for leasehold rights);
- (e) the regulation of existing land uses in the area to be covered by the leasehold rights;
- (f) the integration of land use plans already in existence (such as conservancy or forestry management plans);
- (g) the environmental impact of the proposed development on the leasehold area;
- (h) the social impact of the granting of leasehold rights over an area in terms of lost livelihoods, restricted grazing areas, restricted access to forests and waterpoints, etc; and
- (i) the conditions to be attached to leasehold rights that might mitigate the exclusionary impact of such rights (it might, for example, be possible to grant leasehold rights that provide "hard" tenure to a core development site and "softer" tenure to a broader tourism traversing area).

Specific barrier 2: Absence of integrated land-use planning

Given the relatively weak powers of conservancies and the general difficulty of establishing secure tenure in the communal areas, the absence of integrated land use planning exacerbates uncertainty at the local level by making it difficult to guarantee the integrity of tourism zones in the communal areas. In practice, it means that areas needed for traversing purposes by tourism enterprises cannot be effectively regulated because tourism management plans and zones cannot be guaranteed within a rational overall planning framework. This escalates investor risk and may be regarded as a further factor inhibiting investment in the communal areas.⁹

Recommendation 2: Draft regulations under the Communal Land Reform Act that promote integrated land-use planning at the local level

In the **short term**, it is **recommended** that the MET **propose** further regulations under the Communal Land Reform Act to give Land Boards powers at the local level to initiate the development of land use plans so as to provide a coherent basis to avoid land use conflicts. The specific objectives of the planning could be:

⁹ Recent agreements developed under the auspices of NACOBTA's JV concessioning process have dealt with this constraint innovatively by committing the joint venture partners to a set of practical measures to promote an enabling environment for high value tourism (such as the erection of no-entry signs to enforce agreed zoning schemes). But such measures remain legally unenforceable and thus contribute to an escalation of commercial risk for tourism investors.

- (a) to propose land-use zones, based on local land-use practices and natural resources endowment, which would minimize land-use conflicts amongst stakeholders whilst maximizing utilization of the comparative advantage of available land-uses;
- (b) to assist decision-makers to prioritise development projects (including tourism development) and provide the promoters with the framework for project formulation and development;
- (c) to identify and promote regional co-ordination in the light of initiatives on decentralisation;
- (d) to strengthen the process of inter-sectoral land-use planning; and
- (e) to ensure that the Land Board and all stakeholders have a central data base of existing resource tenure rights to ensure that conflicting rights or land use plans are not sanctioned by the Land Board.

The implementation of this objective could be achieved by requiring that-

- (a) all development projects, including conservancy and community forest applications, and tourism development plans be forwarded to the Land Board;
- (b) the management plans for conservancies and community forests be forwarded to the Land Board (in terms of the Communal Land Reform Act the Land Board may not grant a right of leasehold which would have the effect of defeating the object of a conservancy management plan);
- (c) the Land Board follow a transparent and fair procedure in determining the land use zoning for the area and the granting of land rights with due regard for the needs of all stakeholders, with possible referral of complex issues to the Ministry for final resolution;
- (d) the Land Board have the power to enforce land use zoning and to deal with transgressors; and
- (e) an effective procedure be put in place for dealing with land use conflicts.

Specific barrier 3: Uncoordinated sectoral legislation

As discussed above, the policy and legislative environment relating to land administration and natural resource management in the communal areas has recently undergone significant reform. This has included new legislation dealing with land administration and the management of the wildlife, forestry, inland fisheries and water sectors. The broad thrust of the reforms has been to restore control over land and associated natural resources to the communities who reside in the communal areas. However, the various pieces of legislation have not been fully integrated creating a situation where the rights and duties conferred under one piece of legislation may conflict with the rights and duties granted under another. For example, should the current draft of the Parks and Wildlife Management Bill be enacted, a conservancy's exclusive rights to the utilization of wildlife, wildlife habitats and tourism may be challenged under the Forest Act, 2001 (see section 2.1 above) or, possibly, under the Communal Land

Reform Act, 2002. This contributes to an environment of legal uncertainty which, in turn, undermines business confidence.

Recommendation 3: Promote the integration of sectoral legislation

In the **medium term**, it is **recommended** that the MET **advocate** the integration of various pieces of legislation impacting on resource management so as to ensure that there is a coherent approach to the rights and duties that are bestowed upon resource-using communities at the local level. This in turn would make for a more conducive climate for tourism investment in the communal areas.

Specific barrier 4: Absence of a specific category of communal tenure in the Communal Land Reform Act

There is no specific category of *communal* tenure in the Communal Land Reform Act. Should this have been the case, conservancies could have applied for communal tenure rights (based on their traditional or customary rights) over the whole area included in the conservancy boundaries. This could have ensured that the threats posed by land invasions and self-driven tourists, referred to in paragraph 0 above, could be averted. The enforceable right to exclude outsiders or to let them in on one's own terms is a powerful right to be exercised by conservancies. It would give the tourism investor added peace of mind should the investor's product include the need for control over a broader area, whether it be for the establishment of a lodge, trophy hunting or photographic safaris.

Recommendation 4: Recognition of customary tenure over land and resources

In the **long term**, it is **recommended** that the MET approach the Minister of Lands to consider recognizing a form of customary tenure already in existence. This is communal tenure over land and resources where such land and resources are used communally under customary law and/or in terms of rights granted under wildlife or forestry legislation or any other legislation providing for communal management of land and natural resources. This latter category could include grazing/rangeland management and water management. This would go a long way to improving the tenure security of resource-using communities at the local level, which would in turn enable such communities to pass on a more secure – and therefore more valuable – set of rights to tourism investors.

Botswana: A comparative case study

As in Namibia and South Africa, there are three land categories in Botswana – tribal (71%), state (23%), and freehold (6%). With the exception of nature reserves and some commercial holdings classified as state land, land in the rural areas is designated as tribal land. Like in Namibia, two types of land tenure are permitted on tribal land (customary or leasehold). In 1968, the Tribal Land Act decentralised control over land to local land boards, empowering them to administer land allocation in tribal areas, and to establish and enforce the rules underlying its administration and the rights of various landholders. These locally elected land boards have the power to make customary grants and allocate leases to Botswana within their jurisdiction.

For the purposes of wildlife-based tourism development and community management of natural resources, Wildlife Management Areas (WMAs) were designated to encourage the development of a commercial wildlife industry. Twelve WMAs, consisting of 50 Controlled Hunting Areas (CHAs) and covering 22% of the country's land area, have been proposed, of which nine have been gazetted. In 1989, the Ministry of Local Government, Lands and Housing embarked on a rezoning of all CHAs in the country with the assistance of the districts and the Department of Wildlife and National Parks (DWNP). This followed from the 1986 Wildlife Conservation Policy and the wish to rationalise the management of the CHAs and the activities taking place in them. The boundaries of the CHAs were brought in line with existing administrative, land tenure and land use boundaries and each of the CHAs is now zoned for a form of resource management. Two zonation categories are relevant to the current discussion: Community photographic areas in WMAs (6 CHAs); and Community-managed wildlife utilisation in livestock areas (13 CHAs).

The implementation of this zonation resulted in the allocation of the resource management rights of certain CHAs to communities and others to commercial operators. The underlying assumption is that if one entity (whether a company or a community-based organisation) is responsible for managing a CHA and its resources, and has security of tenure for those rights, then this will result in better management and conservation practices as well as an increase in the financial returns and other benefits from those areas, not only for the stakeholders involved but also the region and the country as a whole.

The CHAs zoned for community-managed wildlife and community photographic use are largely situated in the western areas of the country, with the intended beneficiaries living in and around them. Many of Botswana's rural communities are still largely dependent on the wildlife and other natural resources occurring in these CHAs for their subsistence. The same resources also provide what is often the only basis for the economic development of these regions. Once the relevant community or communities have formed a representative and accountable management entity, and have been officially registered, the management of the relevant area can, upon application, be leased to the community entity by the competent land authority using a standard lease agreement. Typically, these so-called headleases include the following conditions:

- The right to sublet. This is widely done using standardised tender guidelines and with the assistance of the DWNP.
- A specified maximum bed limit for the leased area.
- A term of 15-year with the option to renew for a further 15 years. Provided there is no material breach, a community may thus enjoy a 30-year period of tenure. Nominal lease rentals, commencing at P 1,000 per annum, escalating at 10% and reviewed every five years. The review period does allow the land board to adjust rentals and thus to increase its share of land rents. However, given the national commitment to CBNRM, a dramatic increase is highly unlikely. This means that the bulk of the monies payable to the community lessor by way of sublease accrues to the community; the land boards do not participate in or benefit from such 'rentals'. This gives well-organised and informed communities the opportunity to sublease at market rates earning them up to P1-million per annum in direct lease income.

As outlined earlier, the benefits of resource utilization in CHAs zoned for community management accrue to the relevant communities. These benefits not only consist of lease or rental payments by safari operators, but also include employment, markets for handicrafts, game meat from hunting parties, the power to decide how to allocate the annual hunting quota, how to distribute the benefits, and so on.

The management and distribution of community benefits could take a number of forms but to date all communities have opted for a community trust to hold the lease agreement and distribute the benefits. The main benefit has come from safari companies subleasing the resource use rights for photographic and/or hunting purposes. Other forms (e.g. the trust managing the area themselves, a company with community members holding shares or council-managed projects) are possible and initial attempts at these are underway.

For a detailed discussion of the Botswana case, see Massyn & Koch, 2001.

3 FINANCIAL ISSUES

3.1 Introduction

Investment in the tourism industry in general and the ecotourism sector in particular is fraught with difficulties and regarded as highly risky by commercial financiers. The reasons for this are easy to understand and have been well documented¹⁰:

- (a) **Large capital outlay** – Ecotourism projects require relatively large capital investments, so that an investor is required to place a considerable amount at risk on a single project.
- (b) **Long product development cycle** – It typically takes one or more years to build an ecotourism facility and a further three or four to establish market acceptance and optimal volumes of business. During its early years, the ecotourism enterprise faces severe cash flow problems which can result in a liquidity crisis if the firm has inadequate access to capital reserves.
- (c) **Specialised structures** – Lodges and other tourist accommodation – if they fail commercially – are not easily or cheaply converted to some other purpose, a factor which greatly increases their risk profile from an investor's point of view.
- (d) **Specialised businesses** – The management and marketing of an ecotourism accommodation is a specialised business and, unlike many other property investments, when a financier forecloses on a non-performing loan it is not easy (and may be impossible) to find an alternative operator.
- (e) **Cyclical nature of demand** – Tourism is highly susceptible to seasonal demand fluctuations as well as the vagaries of international exchange rates, perceptions about safety, health and security, and many other critical factors entirely beyond the control of the investor.
- (f) **High levels of fixed costs** – A characteristic of hotels and other tourist accommodation (including ecotourism lodges) is that they are businesses with a high breakeven point – i.e. they have high labour, interest and other fixed costs. This is because they require infrastructure and a level of service to satisfy peak season demand; when trading levels fall below break-even, losses can be considerable and are not easily mitigated. This factor is further exacerbated in the case of small luxury establishments such as game lodges operating in remote rural areas where access costs can be extremely high.

There is thus a widespread perception in the capital markets that ecotourism represents a higher financial risk than many other sectors. This perception is exacerbated in the case of the communal areas by the belief that the land rights underpinning ecotourism enterprises are insecure and that such rights have no (or little) collateral value. Consequently, ecotourism developers – especially those targeting the

¹⁰ See, for example, Kessel Feinstein Consulting, 1992 at Chapter 5 and Deloitte & Touche, 1994.

communal areas – have traditionally found it difficult to raise finance in the commercial capital market and have had to seek investment elsewhere¹¹.

Despite the risk profile sketched above, there is persuasive evidence that ecotourism firms are not inherently unprofitable. Several lodge operating companies – including those with facilities in communal areas – have shown impressive results in recent years. This suggests that the negative perception in the capital market is not fully justified and that potentially viable ecotourism firms face unfair prejudice in their attempts to raise finance on the open market¹². This failure may be attributed to a number of factors, which are discussed at more length in the following sections.

3.2 Long product development cycles

As discussed above, ecotourism enterprises typically face cash flow (or liquidity) problems in the early years after their establishment¹³. This has two adverse consequences when it comes to raising finance:

- (a) Standard investment screening practice is to evaluate capital-intensive projects using discounted cash flow techniques, a process which penalises projects that suffer negative early cash flows and that are slow to generate “normal” returns. Using these techniques, ecotourism projects mostly emerge with poor yields and are therefore considered unviable.
- (b) Even when a commercial lender recognises the long-term viability of an ecotourism enterprise, it is usually unwilling to defer debt repayments as this transfers the cash flow problem from the borrower (the bank) to the lender (the developer).

The long product development cycle and the associated cash flow profile characteristic of ecotourism enterprises thus combine to inhibit the industry’s ability to raise the debt necessary to establish or expand their operations – regardless of their longer-term profitability and creditworthiness.

This problem is widely understood and described in the literature¹⁴. In some jurisdictions, the state has intervened to help remedy the situation by creating (or supporting) loan products – often in partnership with the private and donor sectors – that are tailored to the cash flow needs of tourism enterprises. This

¹¹ Such firms have traditionally relied heavily on shareholders’ funds, often in the form of informal equity capital from what is sometimes called “business angels”. These are private investors who are often motivated not just by financial considerations, although these remain extremely important. In addition to pure business considerations, these investors often find the conservation, development and lifestyle aspects of the ecotourism business alluring. The difficulty of raising

¹² This prejudice is a variant of the so-called “finance gap” which afflicts many small firms seeking capital, especially in the form of long-term financing. See Taylor et al, 1998 for a more detailed discussion.

¹³ The ecotourism industry shares this characteristic with agricultural enterprises. The latter are also characterised by high investment/development costs which are followed by a period of gradual growth in cash-flows, giving rise to similar liquidity problems in the early stages of operation.

¹⁴ See, for example, Lyne et al, 2002 and Khula, 2000.

is most often done because tourism is viewed as a high priority sector with the potential for long term viability and, importantly, the ability to generate significant economic returns at the national and local scales. Under these circumstances, certain states have accepted the responsibility of providing assistance to ameliorate the industry's short term liquidity problems in the interests of stimulating its long term development.

In South Africa, for example, the Department of Land Affairs used an existing public funding agency (Khula Finance Enterprise Limited) to establish a deferred repayment loan facility which was targeted specifically at the ecotourism and agricultural sectors. This facility makes loans (with deferred repayments) available to commercial banks and other credit rated institutions that wish to finance ecotourism enterprises. (See Khula, 2000.) Likewise, that country's largest public funding agency, the Industrial Development Corporation, is highly flexible in structuring deferred repayment loans that fit the cash flow profile of the ecotourism industry.

3.3 Information and capacity deficits

A fundamental issue surrounding business lending in general, and ecotourism lending in particular, concerns the presence of what is often called "information asymmetries" between the lender and the borrower:

The lending situation can be viewed as being an agency problem whereby the bank (the principal) advances monies to the firm (the agent), which in return is expected to provide the bank with a stream of income that yields a 'profit' on this advance. The difficulty in this seemingly straightforward transaction is that it takes place under what is characterised as conditions of imperfect and asymmetric information. (Taylor et al, 1998:61.)

In simple terms, this means that the bank typically does not have sufficient information to evaluate a proposed project and therefore runs the risk of *adverse selection*: i.e. lending to a poor quality proposal or, alternatively, declining a loan to a viable proposition. Another aspect of the problem concerns the subsequent monitoring of a borrower's performance. Having advanced monies, the bank faces the difficulty of obtaining sufficient information to assure itself that the borrower is behaving in a way that protects the bank's interest.

In practice, the bank or other investor has two principal mechanisms to deal with these problems. The first and most widespread response is to demand collateral as a condition for advancing the loan. The second is to develop to an intimate understanding and close working relationship with the borrower. (See Talyor et al. 1998 for a more detailed discussion.)

These difficulties, and the associated mechanisms typically used by the banks, apply to business lending in general. They are however further exacerbated in the case of the ecotourism industry in Namibia, especially in the communal areas where land tenure is widely perceived to be insecure.

3.4 The question of incentives

Various kinds of incentives have been used to stimulate development in the tourism industry, including:

- (c) **Tax holidays** – The firm undertaking the investment is accorded a tax “holiday” for a specified period; i.e. during say the first five years of a project no income tax is payable on profits generated; thereafter tax is payable at say 50% of the regular rate for some years, etc. (various permutations are, of course, possible). In South Africa, for example, income-tax write-offs of the development costs of new hotels were introduced in the mid-1960s. This scheme is widely believed to have been responsible for the “coming of age” of that country’s hotel industry. Before the incentives, there were virtually no international-quality hotels; by the early 1980s there were first-class hotels in all major centres.
- (d) **Cash grants** – In countries where this has been used (including South Africa), the grant is usually based on the number of units built or a percentage of the capital expenditure incurred in the development of new plant or the expansion of existing facilities (often on a scale which provides a higher grant for higher-graded establishments). An example from the southern African region is the Small and Medium Enterprise Development Programme currently offered by South Africa’s Department of Trade and Industry; this programme offers tax-free cash rebates of up to 30% of capital expenditure on new or expanded tourism plant.
- (e) **Soft loans** – A certain amount of finance is often allocated for approved projects (often through a development agency) under substantially better terms than available in the financial markets. A famous regional example is the development of the first phase of *Sun City* which was partly financed through highly subsidised loans from the Industrial Development Corporation. In Namibia, the Affirmative Action Loan Scheme provides low cost loans to historically disadvantaged Namibians to purchase freehold land for agricultural purposes.
- (f) **Infrastructure** – Government (whether at the central, provincial or local level) provides some or all the support infrastructure for key projects at its cost. This may include access roads, sewerage, potable water and electricity. The Greater St Lucia Wetlands Park Authority used this approach during its recent commercialisation drive. It used public funds to provide support infrastructure at the designated development sites (which were successfully let, attracting first phase investment of almost R500-million).
- (g) **Other** – Other mechanisms include assessment-rate holidays, free land or leases at peppercorn rentals, subsidisation of overseas marketing costs, etc.

There is much debate in the literature regarding the value of incentives as tools to stimulate development in the tourism sector. However, regardless of the merits of this debate, the regional survey conducted as part of the current study did indicate that tourism incentives are widely available in the SADC region, including Mauritius as well as Namibia’s neighbours to the west and south. In all these

jurisdictions incentives to tourism developers are a consequence of the prioritisation of the industry as a key economic driver. These countries have calculated that the cost of incentives is outweighed by the likely financial and economic gains to be derived from an expanded industry. **Moreover, incentives are not only used to grow the industry but are also to promote economic transformation.** In Mauritius, Botswana and South Africa, tourism incentives are used by the state as a strategic tool to induce foreign or previously advantaged investors into partnerships with local or historically disadvantaged individuals and firms. In this way, incentives are not only used to stimulate the expansion of the tourism industry but also to drive its transformation.

3.5 Barriers and recommendations

Access to capital

There is a widespread perception in the capital markets that ecotourism is a high risk industry. As sketched above, the industry is characterised by a long product development cycle which causes early liquidity problems. This is exacerbated by the absence of specialised tourism expertise in Namibia's financial institutions and widespread perceptions that land rights in the communal areas have little or no collateral value.

Specific barrier 1: Absence of financial products tailored to the cash flow needs of the ecotourism industry

There are currently no financial products suited to the cash flow needs of the ecotourism industry available in Namibia. This inhibits Namibian investors' ability to raise funds for tourism investment and places them at a disadvantage relative to their SADC competitors.

Recommendation 1: Encourage the development of financial products suited to the needs of the ecotourism industry

In the **short term**, it is **recommended** that the MET engages with the DBN and private banking sector to advocate the development of financial products (such as deferred repayment loan schemes) tailored to the cash flow needs of the tourism industry.

The DBN is currently developing financial products and procedures, which include sector-based project finance. This will provide funding for projects within sectors of the economy identified as key areas of growth by virtue of their strategic impact. The DBN has prioritised tourism as a key sector eligible for sector-based project finance. Its management indicated during the inception interviews that the DBN was sympathetic to the needs of the ecotourism industry, specifically the need to develop funding products tailored to its specific cash flow needs. (See DBN, 2004.)

Specific barrier 2: Absence of specialised tourism expertise and credit assessment procedures in key institutions

Commercial banks, as well as the embryonic DBN, currently lack the specialised expertise and credit assessment procedures necessary to deal with ecotourism proposals. This has two inhibitory implications for tourism investment in Namibia's communal areas:

- (a) As sketched above, the ecotourism industry has a risk and cash flow profile that does not sit well with the standard credit assessment approaches applied by funding institutions. Unless these institutions develop a specialised understanding of the sector, their ability to make informed decisions regarding ecotourism proposals will be compromised.¹⁵ Under such circumstances, it is likely that funding institutions will reject credit applications for ecotourism projects regardless of their long term merits.
- (b) The absence of specialised capacity also inhibits the ability of financial institutions to develop a close working relationship with borrowers in the ecotourism industry. This removes the second response available to banks operating under conditions of information asymmetry.

Similarly, it appears that there is currently no specialised expertise in government regarding tourism partnerships. This means that government lacks the capacity to assess proposed partnerships between the private sector, local communities and financial institutions based on a clear understanding of best practice yardsticks. This capacity deficit also inhibits the ability of government to develop informed "fair deal" guidelines regarding, for example, lease duration, remuneration levels and affirmative action obligations to be incorporated in the contractual relations governing tourism partnerships. This inhibits government's capacity to protect the interests of communities who are perceived to be vulnerable to exploitation by well-resourced tourism developers.

Recommendation 2: Promote the development of tourism-related technical expertise in key institutions including the DBN and MET

In the **short term**, it is **recommended** that the MET, together with relevant NGO and donor organisations, **advocate** the development of specialised tourism-related technical expertise in the DBN, possibly in the form of a donor-sponsored programme. As noted above, the DBN has identified tourism as a key industry eligible for sector-based project finance. In implementing this decision, it is imperative that the DBN develops the specialised capacity needed to deal with the tourism industry.

In the **medium term**, it is further **recommended** that the MET **institutionalises** specialised tourism capacity with a lucid grasp of best practice within the Ministry, possibly in the concessions unit to be

¹⁵ Again, this problem has been recognised and remedied in other jurisdictions. In South Africa, for example, the IDC has developed specialised capacity in the form of a strategic business unit dedicated to the tourism sector. This unit screens all tourism applications using its sector-specific expertise.

established in terms of MET's draft concession policy. Such expertise would enable MET to act with greater confidence in its engagement with the private tourism sector, the financial institutions and local communities.

Specific barrier 3: Uncertain collateral value of leasehold rights in communal areas

Namibia's banking sector – including the private banks and the DBN – perceives land rights in the communal areas to be insecure and therefore to have no or little collateral value. This inhibits the ability of tourism investors to raise capital on the open markets.¹⁶

Recommendation 3: Establish the collateral value of leasehold rights in the communal areas

Establishing acceptance of the collateral value of leasehold rights acquired under the new land dispensation is of crucial importance if significant capital is to be released for investment in the communal areas. In the **short term**, it is therefore **recommended** that the regulations to be drafted in terms of recommendation 1 in section 2.2 above (providing guidance to the Minister of Lands in the approval of tourism leases) take into account the needs of the financial institutions regarding the collateral value of leasehold rights.

Specific barrier 4: Absence of incentives for the tourism sector

Special incentives are available for manufacturers and exporters, but Namibia currently does not offer incentives in the tourism sector (see Republic of Namibia, 2004). This puts the country at a disadvantage compared to its SADC competitors where generous incentive schemes are on offer.

Recommendation 4: Develop appropriate baseline information and build confidence in the strategic importance of the tourism industry to prepare the ground for an argument in favour of incentives for the tourism sector

In the **medium term**, it is **recommended** that the MET **promotes and coordinates** the preparation of baseline information on the tourism industry designed to provide the background for a consideration of the advisability of incentives for the tourism sector.

Given current fiscal constraints, it is unlikely that the incentives offered to manufacturers and exporters will be expanded to other sectors such as tourism or that new incentives will be approved in the near future. Any case for the introduction of tourism incentives in Namibia will therefore have to be carefully prepared and argued. Such a case would have to be rooted in a thorough understanding of the current and potential contribution of tourism to the national and regional economies of Namibia, and would have

¹⁶ For example, Mr Sven Thieme of Olthaver & List cited the absence of land-based collateral as the major factor preventing his group from expanding their tourism interests in the communal areas.

to demonstrate persuasively that the expanded contributions of tourism to the national treasury and economy would substantially outweigh the costs imposed by an incentive scheme.

It would appear that there is currently some scepticism regarding the economic claims of the tourism industry in Namibia¹⁷. Moreover, the baseline information required to prepare a robust argument in favour of incentives seems not to be available at present. The question of incentives is therefore best seen in the context of the larger need to build confidence in the tourism industry as a strategic sector that can contribute significantly to the growth *and* transformation of the national economy. This will involve a broad effort including the promotion of dialogue between government and the private sector, the development of transformation instruments such as industry charters and affirmative policy approaches, and the gathering of data to underpin the various arguments regarding the strategic importance of tourism. As part of this larger agenda, and at the right strategic moment, the question of incentives to stimulate the growth and transformation of Namibia's tourism industry could be revisited.

4 EMPOWERMENT ISSUES

4.1 Introduction

The Namibian tourism industry is under-represented by historically disadvantaged individuals and enterprises. This is a consequence of a historical pattern of exclusion which has its roots in the colonial era when white interests monopolised tourism-related business opportunities.

In other jurisdictions with similarly skewed ownership patterns, financial instruments are often used to help remedy the problem of historical exclusion. In South Africa, for example, state financial assistance is widely employed to advance black economic empowerment in the tourism industry and to improve the outreach and efficacy of financial institutions, especially in unserved rural areas. In Mauritius and Botswana, state incentives, subsidised loan products and credit guarantee schemes are likewise used to assist indigenous citizens to acquire ownership of tourism assets. South Africa has even developed financial packages that assist disadvantaged partner(s) to capitalise initial equity in the form of state grants.

4.2 Barriers and recommendations

Historical exclusion

The skewing of ownership and control in the Namibian tourism industry has several negative consequences. It harms the image of the industry thus undermining not only the level of support

¹⁷ This scepticism is probably partly the result of the paucity of baseline information but also the lack of trust between the industry and government.

rendered by government but also the prioritisation of tourism as a key sector to drive economic growth at the regional and national scales¹⁸.

Specific barrier 1: Lack of trust between government and the private tourism industry

The fact that tourism in Namibia is largely portrayed as a “white” industry is harming its image and affecting the level of support rendered by government to the tourism industry. This represents a high level but fundamental barrier to the expansion of the tourism industry in Namibia.

Recommendation 1: Develop a concerted programme to build confidence in the strategic importance of the tourism industry

In the **short term**, it is **recommended** that the MET, together with the organised tourism industry, labour and the NGO sector, develop a programme of engagement with government designed to build understanding of, and confidence in, the strategic importance of the tourism sector as a driver for economic growth, diversification and empowerment.

Specific barrier 2: Absence of financial instruments designed to advance black empowerment in the tourism industry

It would appear that Namibia currently does not have any financial products specifically designed to advance the interests of historically disadvantaged individuals and enterprises in the tourism industry. A subsidised loan scheme is available in the agricultural sector and its extension to the tourism sector was suggested by some of the informants interviewed during the inception phase. Various international financial agencies also have products that may be used to advance empowerment interests in Namibia’s tourism sector. But there is no local equivalent to the “affirmative action” financial products available in countries such as Botswana, Mauritius and South Africa. It is likely that the absence of such assistance is hampering the transformation of Namibia’s tourism industry and, as such, is a constraint to the expansion of acceptable tourism in the communal areas.

Recommendation 2: Investigate the extension of the subsidised loan scheme from the agricultural to the tourism sector and advocate the establishment of “affirmative” financial products designed to expand black ownership in the tourism industry

In the **short term**, it is **recommended** that the MET, **investigate** the extension of the subsidised loan scheme from the agricultural to the tourism sector. It is further **recommended** that the MET **engages**

¹⁸ Moreover, it is widely recognised that the broadening of ownership in tourism ventures will bring significant security and productivity benefits for the industry. Finally, there is a strong political imperative to ensure that the ownership of and benefits associated with ecotourism assets are more widely distributed than at present.

the DBN to advocate the establishment of “affirmative” financial products designed to expand black ownership in the tourism industry.

Specific barrier 3: Absence of a transformation charter for broad-based empowerment in the tourism industry

At a recent conference on empowerment in the tourism sector sponsored by the MET and NACOBTA, consensus was reached that the Namibian industry urgently requires a transformation charter for broad-based empowerment in the tourism industry, and that empowerment objectives should be prioritised in the national tourism policy as well as in the investor procurement procedures currently being developed by the MET.

Recommendation 3: Develop a transformation charter for the tourism industry and entrench empowerment objectives in the national tourism policy

In the **short term**, it is **recommended** that the MET, together with the organised tourism industry and labour, **develop** a transformation charter. It is further **recommended** that the MET **incorporate** empowerment objectives in the national tourism policy (which is currently being drafted).

5 CONCLUSION

Many processes are already underway to ease the obstacles described above and to provide a more conducive environment for tourism development. Since independence, the Namibian Government has been developing a rational basis in policy and legislation for the management of natural resources which has positive spin-offs for the tourism industry targeting communal areas. Namibia also has independent-minded courts to enforce the rights enshrined in the Constitution and legislation which provides a mechanism to safeguard investor confidence and to limit some of the risks attendant upon investing in Namibia.

With the current drafting of the Parks and Wildlife Management Bill, the drafting of the Forestry regulations and indications from the Ministry of Lands that it would welcome proposed new regulations under the Communal Land Reform Act, the opportunity exists to further enhance the investment climate in Namibia’s communal area. Moreover, the newly established DBN has prioritised tourism as a key sector eligible for sector-based project finance and is currently in the process of developing the financial products and procedures it will offer to the market. This provides a unique opportunity to promote the transformation of the Namibian tourism industry while at the same time improving its access to capital.

6 LIST OF PEOPLE INTERVIEWED

Caller, C.	GtZ
Clarke, Victoria	Development Bank of Southern Africa
Corbett, Andrew	Advocate (Namibia)
De Wet, Willem	Namibia Country Lodges
Ipinge, John Ali	USAID (Namibia)
Jones, Brian	USAID (Namibia)
Humavindu, Michael H.	Development Bank of Namibia
Katjuongua, Olga	NACOBTA
Lindeque, Malan Dr	Permanent Secretary – MET
Mashele, Don	Khula Finance Enterprise Limited
Mieze, Albert	Director of Tourism
Muvangua, Mbapeua	Land Boards, Tenure and Advice
Mutilitha, Ignatius K.	Ministry of Trade and Industry
Namugongo, Sackey J.	MET
Ndilula, K.	Bank of Windhoek
Nuyoma, David	Development Bank of Namibia
Rajah, Calvenie	Industrial Development Corporation
Schlettwein,	Permanent Secretary – Finance
Seanath, Manoj	Industrial Development Corporation
Skyer, Patricia	NACSO
Thieme, Sven	Ohtaver & List Group of Companies
Thouless, Chris Dr.	Namibia Tourism Development Programme
Upindi, O.K.	The Small Business Credit Guarantee Trust
Van Smeerdijk, Dave	Wilderness Safaris Namibia
Weaver, Chris Dr	WWF Life
Woel, H. Dr	GtZ
Zaire, Mara	Namibian Investment Centre

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